

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by GEN STANLEY A. MCCHRYSTAL

(Appointing authority)

on 7 APRIL 10 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at Bagram Airfield, Afghanistan at 1300
(Place) (Time)
on 9 APRIL 10 (Date) (If a formal board met for more than one session, check here ☐. Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1030 on 21 April 2010
(Time) (Date)
and completed findings and recommendations at 2200 on 21 April 2010
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO	NA
1	Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)				
a.	The letter of appointment or a summary of oral appointment data?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Copy of notice to respondent, if any? (See item 9, below)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c.	Other correspondence with respondent or counsel, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d.	All other written communications to or from the appointing authority?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e.	Privacy Act Statements (Certificate, if statement provided orally)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g.	Information as to sessions of a formal board not included on page 1 of this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h.	Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.

2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO	NA
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Does each letter of notification indicate —	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FOOTNOTES: 1) Explain all negative answers on an attached sheet. 2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.				

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board) , having carefully considered the evidence, finds.

SEE ATTACHED MEMORANDUM

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:

SEE ATTACHED MEMORANDUM

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)

(b)(3), (b)(6)
(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board.
(In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

STANLEY A. MCCHRYSTAL

23 April 2010

MEMORANDUM FOR RECORD

SUBJECT: AR 15-6 Investigation Into Post Operation Activities on [REDACTED] (b)(1)1.4a on 12 February 2010 in Gardez District, Paktya Province

1. (U) Purpose of Investigation: The purpose of this investigation is to determine, first, whether the ground force deliberately misled their higher headquarters in initial reports regarding the incident; and second, whether the ground force attempted to hide the circumstances surrounding the casualties by altering, tampering with, and/or cleaning up the incident scene.
2. (U) Note. After weighing the potential benefits of visiting the scene of the incident, such as being able to see the locations of the shooter, layout of the courtyard/entrance to Room 1A/interior of Room 1A, speaking with witnesses who could describe what they saw in context, etc., against the drawbacks, such as re-awakening emotional and political turmoil which had, at the least, abated somewhat since the operation, I determined the amount of information that could be useful to this information was not worth the cost. Therefore, I decided against a visit to the scene of the incident, instead asking the family members to travel to the PRT in Paktya to meet with us.
3. (U) Participants:
 - a. [REDACTED]
 - b. [REDACTED] (b)(3), (b)(6)
 - c. [REDACTED]
 - d. [REDACTED]
4. (U) Facts:

[REDACTED] (b)(1)1.4a, (b)(5)

2) (U) The target compound belonged to [REDACTED] (b)(6)

[REDACTED] (b)(6)

Several members [REDACTED] (b)(6)

[REDACTED] (b)(6)

extended family lived in the compound, including Daoud. (Exhibit 1, Tab 11)

3) (U) On 11 February 2010, Mohammad Daoud was having a party in his compound to celebrate the birth of his grandson. (Exhibit 1, Tab 11)

(b)(1)1.4a, (b)(1)1.4c

6) (U) Two individuals, Abdul Ghafar, Daoud's son and the **father of the son** whose birth was being celebrated, and the guitarist from the party, **came to the gate within** the target compound and noticed individuals (the assault force) **outside of the compound**. (Exhibit 1, Tab 11 and Exhibit 2x)

7) (U) Abdul Ghafar returned to the room **where the party was** being held in Room 35 and said that there were individuals outside. (Exhibit 1, Tab 11 and Exhibit 2x)

8) (U) Mohammad Daoud told his **guests to stay inside** the room, exited Building 35, went to Building 34, and came out **into the courtyard** with an AK-47. (Exhibit 1, Tab 11 and Exhibit 2x)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

(b)(1)1.4a

11) (U) **Shortly** after Daoud was shot, several people from the compound went into the **courtyard and took him** into Room 1A. (Exhibit 1, Tab 11 and 12 and Exhibits 2h, 2w, and 2x)

12) (U) After Daoud was removed from the courtyard, several individuals moved **around the courtyard** and in and out of Room 1A, despite the continuation of the tactical callout and members of the assault force yelling down for them to stop moving. (Exhibit 1, Tab 11 and Exhibits 2h, 2k, and 3g)

13) (U) There was a blanket covering at least part of the doorway to Room 1A at one point in the evening. (Exhibits 2e, 2k, 2y, 2aa, and 3i)

14) (U) Daoud's brother, Zahir, an attorney for the Ahmad Abad district, exited the door to Room 1A with an AK-47 and crouched and aimed the weapon at two assault force members on the roof approximately 25 meters away. (Exhibit 1, Tab 11 and Exhibits 2e, 2h, 2k, and 3i)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

19) (U) Zahir fell back into Room 1A after he was engaged, and the door was quickly closed by someone in Room 1A. (Exhibit 1, Tab 11 and Exhibit 2k)

(b)(1)1.4a

b. (U) Clearing the Objective

(b)(1)1.4a

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

9) (U) It was difficult to collect evidence and assess the bodies because of the number of people in the compound and in Room 1A. (Exhibit 1, Tab 11 and Exhibits 2m, 2n, 2p, 3k, 3l)

(b)(1)1.4a, (b)(6)

e. (U) Investigations

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

2) (U) The MPs saw BG Destigee's investigators collect brass casings from the rooftop, dig into bullet holes in Room 1A and dig into an apparent bullet hole on the outside of Room 8A. (Exhibits 2n and 2s)

3) (U) BG Destigee's investigator, (b)(6) and other family members continued to prepare the bodies for burial. (Exhibits 2l and 2t)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

8) (U) The ANP Chief for Paktya Province, BG Wardak, also arrived at the scene at this time. (Exhibit 1, Tab 11 and Exhibit 2p)

9) (U) No member of the US forces saw a local doctor examine the bodies of the women. (Exhibits 2c, 2d, 2e, 2f, 2h, 2i, 2j, 2k, 2l, 2m, 2n, 2p, 2q, and 2r)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

f. (U) Information Operations

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

2) (U) While the assault force was still on the objective, ISAF issued a press release stating that Coalition Forces had found the bodies of three dead women "bound and gagged" on the objective. This press release was never coordinated (b)(1)1.4a prior to its release. (Exhibit 1, Tab 15)

3) (U) Shortly after U.S. forces left the compound, ISAF issued a second press release stating that Coalition Forces had found the bodies of two dead women bound and gagged and had found two men dead on the objective. (Exhibit 1, Tab 15)

(b)(1)1.4a

5) (U) In newspaper articles covering the operation, an anonymous NATO official was quoted as saying that the killing resembled an "honor killing." (Exhibit 1, Tab 15)

5. (U) Findings:

Question A. (U) *What are the facts and circumstances surrounding the post-operation events on the objective by the ground force, to include reporting to higher headquarters?*

(b)(1)1.4a, (b)(1)1.4c, (b)(3), (b)(5), (b)(6), (b)(7)(E), (b)(7)(F)

(b)(1)1.4a, (b)(3), (b)(5), (b)(6), (b)(7)(E), (b)(7)(F)

Question B: (U) *What actions did U.S. servicemembers take when assessing the scene? Did U.S. servicemembers seal off the objective area, and if so, how long? Who, if anyone, from outside the ground force was allowed inside the objective area during this period?*

- 1) ~~(S)~~ (b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

Question C. (U) *Did anyone attempt to or succeed in removing bullets from the walls in the home where the civilians were killed, and if so, why?*

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

Question D. (U) *Did anyone attempt to or succeed in removing bullets from the bodies of any of the five casualties and, if so, why? Did anyone attempt to or succeed in cleaning up or altering the bodies of any of the five casualties, and if so, why?*

(b)(1)1.4a, (b)(3), (b)(5), (b)(6), (b)(7)(F)

2) (U) The claim that assault forces removed bullets from bodies comes from family members of the individuals killed. It is not clear what they saw that might have led them to make this claim, but certainly the assault forces, the MPs, the LEPs, and the (b)(6)

examined the women's bodies. The Afghan investigation reports that an American bullet was found in the body of one of the dead women, but it does not say how that bullet was found or who removed it from the woman. There is no evidence to support that bullets were removed from the bodies by anyone associated with U.S. Forces.

3) (U) The pictures taken of the bodies immediately upon their discovery **show** the bodies in the same condition that the pictures taken later in the morning by (b)(6) (b)(6) do. The wounds look the same, the bodies are no cleaner than they were initially.

4) (U) When the assault force entered the room, the women's bodies **had** already been altered in that they were moved onto their backs and the **majority** of them were prepared for burial with cloth wrappings around their head and toes. There is **nothing** to suggest that the assault forces or other U.S. forces cleaned or altered the bodies of the five casualties beyond the manipulation needed for investigation. The pictures taken by the BHO element show that the bodies had been manipulated after the pictures by the assault forces were taken. Clothes were lifted, bodies were rolled over in order to find the wounds and determine the cause of death. However, there is no **evidence that the bodies** were altered or cleaned in any way in order to conceal the cause of **their death**.

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

Question E. (U) *Did anyone attempt to hide the cause of death of the casualties?*

1) (U) All evidence shows that the assault forces were unaware that they might have killed these women. They spent their time trying to determine the cause and timing of these women's death. **Once these women** were discovered, the focus of the assault force became **determining the cause of their death**. The Ground Force Commander's explanation of the women's **death was not an attempt** to hide the cause of death, but was his honest assessment, resulting from an unfamiliar and confusing scene.

(b)(1)1.4a

(b)(1)1.4a

Question F. (U) *Did anyone alter, clean, or otherwise tamper with the scene in any way following the operation, and if so, why?*

(b)(1)1.4a, (b)(6)

Question G. (U) *Did the ground force follow the proper unit standard operating procedures or policies for sensitive site exploitation or Battle Damage Assessment? If not, how did their actions vary from the SOP?*

(b)(1)1.4a, (b)(5), (b)(6)

(b)(1)1.4a, (b)(5), (b)(6)

Question H. (U) *Any other matters pertaining to this incident that you deem relevant to the scope of this investigation.*

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

(b)(1)1.4a, (b)(3), (b)(6), (b)(7)(F)

2) (U) This investigation attempts to answer the questions asked by GEN McChrystal and to address the allegations made by the Afghan officials in their brief on the MOI's investigation. Of note, the most serious of the allegations made in the briefing are not found in their written investigation. The discrepancies include: 1) the brief included pictures of Daoud that purported to show that Daoud was shot in the back and that his body was washed, but the investigation itself excludes any mention of this fact or any pictures of Daoud's wounds; 2) the brief also included claims that Daoud did not have a weapon when he was killed, but this fact was not in the investigation; 3) the brief included claims that the bodies, walls, and floors were washed by the assault force before the Afghans arrived in an effort to cover something up, but nothing in the Afghan investigation supports this claim; 4) the brief included claims that money had been stolen from the home, but the investigation did not make this allegation, although the investigation did recommend returning all "robbed cash;" 5) the brief also included the claim that sealing off the compound allowed these people to die, but nothing in the written investigation states this; and 6) in the MOI brief, LTG Yarmand stated that the assault force should have known that ANP lived in the compound based on the ANP vehicle in the yard, but this was not in the written investigation. Beyond the brief, further claims of assault forces removing bullets from the bodies have been made in newspaper accounts that are not found in the Afghan investigation either.

(b)(1)1.4a, (b)(6)

(b)(1)1.4a, (b)(6)

6. (U) Recommendations:

a. (U) The primary recommendation resulting from this investigation is that no member of the assault force receives disciplinary action beyond that recommended in the initial investigation. This investigation found no attempt to hide or cover up the circumstances of the local national women's deaths.

(b)(1)1.4a, (b)(6)

d. (U) Additionally, it is clear that U.S. forces cannot always share operational information

with local ANP leaders out of fear of corruption or compromising the operation. In circumstances where units have developed a level of trust with their ANP partners, coordination before an operation may not only allow ANP participation, as directed by the Night Raid Tactical Directive, but also may prevent situations like this if the ANP recognizes the target house as belonging to a high ranking ANP officer.

(b)(1)1.4a, (b)(6)

7. Points of Contact:

- a.
- b.
- c.
- d.

(b)(3), (b)(6)

(VoNIP)

(b)(3), (b)(6)

Investigating Officer



HEADQUARTERS
UNITED STATES FORCES - AFGHANISTAN
KABUL, AFGHANISTAN
APO AE 09356

USFOR-A-CDR

7 April 2010

MEMORANDUM FOR (b)(3), (b)(6) to USFOR-A, Kabul, Afghanistan

SUBJECT: Appointment Order - Investigating Officer Pursuant to Army Regulation (AR) 15-6, *Procedures for Investigation Officers and Boards of Officers*, 2 October 2006

1. REFERENCES:

- a. AR 15-6, (*Procedures for Investigating Officers and Boards of Officers*), 2 Oct 2006;
- b. Guide for AR 15-6 Investigating Officers;
- c. Uniform Code of Military Justice, 2008;
- d. Department of the Army (DA) Form 3881, Rights Warning Advisement; and
- e. DA Form 2823, Sworn Statement (with Privacy Act Statement).

2. (b)(3), (b)(6), (b)(7) having been made available to the Commander, USFOR-A, by MARCENT to support this USFOR-A investigation, you are hereby appointed as an investigating officer pursuant to AR 15-6, Chapter 3, *Procedures for Investigating Officers and Boards of Officers*, to conduct an informal investigation related to a civilian casualty incident by (b)(1)1.4a on 12 February 2010 in Gardez District, Paktya Province. (b)(1)1.4a has previously investigated the operation and the events surrounding the civilian casualties. Your investigation will focus on two issues: first, whether the ground force deliberately misled their higher headquarters in initial reports regarding the incident; and second, whether the ground force attempted to hide the circumstances surrounding the casualties by altering, tampering with, and/or cleaning up the incident scene. This investigation is your primary mission until you tender your completed findings and recommendations to the commander, no later than 15 days from the date you receive this order. Your appointment remains in effect until the investigation is completed and no further investigation is required, unless released sooner by the appointing authority.

3. As noted above, your investigation will focus on the events on the objective immediately following the operation. Your investigation will address the following matters using a question and answer format in your findings:

- a. The facts and circumstances surrounding the post-operation events on the objective by the ground force, to include reporting to higher headquarters;
- b. What actions did U.S. service members take when assessing the scene? Did U.S. service members seal off the objective area, and if so, how long? Who, if anyone, from outside the ground force was allowed inside the objective area during this period?
- c. Did anyone attempt to or succeed in removing bullets from the walls in the home where the civilians were killed, and if so, why?
- d. Did anyone attempt to or succeed in removing bullets from the bodies of any of the five casualties, and if so, why? Did anyone attempt to or succeed in cleaning up or altering the bodies of any of the five casualties, and if so, why?
- e. Did anyone attempt to hide the cause of death of the casualties?

f. Did anyone alter, clean, or otherwise tamper with the scene in any way following the operation, and if so, why?

g. Did the ground force who follow the proper unit standard operating procedures (SOP) or policies for sensitive site exploitation (SSE) or Battle Damage Assessment (BDA)? If not, how did their actions vary from the SOP?

h. Any other matters pertaining to this incident that you deem relevant to the scope of this investigation.

4. You will make specific factual findings and have the discretion to use any combination of the following methods: examination of relevant documents; visiting relevant locations; **evaluating** procedures; conducting inventories; taking pictures; and interviewing witnesses, **documenting** all witness interviews in writing. You are not limited to these means of investigation, and your legal advisor may provide you with additional guidance.

5. Based upon your factual findings, you will make recommendations which are not only supported by the facts, but also reasonably related to the facts.

6. Before you begin your investigation, you must receive a briefing from (b)(3), (b)(6), (b)(7)(F) (b)(6) who has been appointed as your legal advisor. (b)(3), (b)(6), (b)(7)(F) or DSN at (b)(6). You must consult with your legal advisor regarding all aspects of this investigation, including developing an investigation plan, determining whether witnesses need to be advised of their rights under the Article 31, UCMJ, (or the Fifth Amendment), and preparing your findings and recommendations. You may use the investigative resources located at the USFOR-A SharePoint Portal:
<http://oneteam.centcom.smil.mil/sites/USFORA/SJAsite/References/Forms/AllItems.aspx>.

7. You must review the original (b)(1)1.4 investigation prior to beginning your own. You may use any statements or exhibits from that investigation as you deem necessary, but you should re-interview key witnesses, to include members of the ground force, regarding the issues listed above.

8. You are to conduct this investigation using the procedures outlined in Chapter 3, AR 15-6. No individual has been named as a respondent at this time. All witnesses will be sworn-in prior to their interview. You are to thoroughly document all witness interviews in writing, preferably on a DA Form 2823 (Sworn Statement). You will interview all witnesses in person, if practical. Reduce any oral statements to memorandums for record.

9. If, in the course of your investigation, you come to reasonably suspect that certain people may have engaged in criminal conduct, you must advise them of their rights under Article 31, UCMJ (right against self-incrimination, outlined in DA Form 3881 warnings), or the Fifth Amendment, as appropriate. Witness waivers of their Article 31 or Fifth Amendment rights will be documented on DA Form 3881 (Rights Warning Procedure/Waiver Certificate). In addition, you may need to provide a witness with a Privacy Act statement before you solicit any personal information. You are to maintain a daily written chronology of your actions on this investigation. You are strongly encouraged to consult your appointed legal advisor if you have any questions regarding these procedures.

10. You may examine documents of personnel senior to you, and interview personnel senior to you. However, if, in the course of your investigation, you determine that the investigation will require you to examine the conduct or performance of duty of a service member senior to you, or to which you

USFOR-A-CDR

SUBJECT: Appointment Order - Investigating Officer Pursuant to Army Regulation (AR) 15-6, *Procedures for Investigation Officers and Boards of Officers*, 2 October 2006

have a moral or ethical conflict, then you shall report that fact to my office immediately. I will then appoint another service member, senior to the service member affected, who will either replace you as the investigating officer or conduct a separate inquiry into the matters pertaining to the service member.

11. If you determine through your investigation that possible criminal conduct has occurred, immediately notify your appointed legal advisor before proceeding any further with your investigation. Criminal conduct includes violations of the UCMJ, punitive regulations, international, host nation, or other applicable state or federal law. In making this decision, consider whether it is more likely than not, under the circumstances you are aware of, that an offense has been committed by someone. Should there be any ongoing criminal investigation into this matter, you are to ensure that you do not interfere with any such investigation.

12. From the evidence, you will make findings concerning what occurred. Support your findings by substantial evidence and by a greater weight of evidence than supports any different conclusion. In developing your recommendations, ensure that your recommendations are supported by your findings. Develop in your recommendations any courses of action that seem appropriate to resolve any issues or problems raised by your findings, and recommend whether judicial, or no judicial proceedings, or further investigations are warranted.

13. The report of investigation will be completed on a DA Form 1574. The report will include a table of contents, and all exhibits will be tabbed. You will consult with your appointed legal advisor in developing your findings and recommendations. Your findings and supporting documentation shall be as thorough as necessary to fully capture the facts and circumstances surrounding the scope of this investigation.

14. Submit your findings and recommendations IAW AR 15-6 to the Office of the Staff Judge Advocate, USFOR-A, for a legal review no later than 15 days from the date of appointment. Submit any request for modification of the suspense or the scope of your investigation to Staff Judge Advocate, USFOR-A, through your legal advisor.

FOR THE COMMANDER:

(b)(3), (b)(6)

Staff Judge Advocate

EXECUTIVE SUMMARY

On 12 February 2010, elements of (b)(1)1.4a discovered the bodies of three deceased females during post-operation SSE on a target in Khetaba Village. (b)(1)1.4a and the Afghan Ministry of Interior initiated separate investigations of this incident. After receiving the (b)(1)1.4a report and a brief by the MOI Investigating Officer, LTG Yarmand, GEN McChrystal subsequently ordered this investigation to determine: 1) Did the ground force deliberately mislead its higher headquarters in initial reports regarding this incident?; and, 2) Did the ground force attempt to hide the circumstances surrounding the casualties by altering, tampering with, and/or cleaning up the incident scene?.

Our investigation concludes that the answer to both of these questions is "No" and recommends no disciplinary action against the assault force members. The facts gathered in this investigation indicate that ground force personnel were unaware that the females were killed when they engaged Mohad Zahir after he emerged from a building in the compound with an AK-47 pointed at the assault force on the roof. While multiple Afghan statements indicate that the three females were attempting to prevent Zahir from confronting (b)(1)1.4a and were killed by rounds that either passed through or missed Zahir, and /or ricocheted off the walls, by all accounts neither of the shooters saw the women as the view in to the room behind Zahir was likely obscured by his presence in the small doorway and a blanket hung over the exterior door entrance. The ground force was confused by the unfamiliar sight of the women prepared so quickly for burial and firmly believed that they did not kill the three women. They therefore began to seek an explanation for the deaths. Although the facts as they are examined now make it highly improbable these women were killed by any other means and placed on the scene, the ground force believed that the women had been killed prior to the operation when they first assessed the situation. Our investigation found that the ground force's attempt to assess and explain the unusual scene in Room 1A led to an assumption that the women had been killed by Afghans and placed on the scene. This report was not made in an attempt to mislead higher headquarters, but was the honest assessment of the situation by forces on the ground.

It is undeniable that five innocent people were killed and two innocent men were wounded in the conduct of this operation. To simply call this "regrettable" would be callous; it is much more than that. However, the unique chain of events that led to their deaths is explicable. It was confirmed that (b)(1)1.4a was on the target area/compound before the ground force was launched. The ground force did not receive any intelligence that he had left the objective before they began the operation. The two men subsequently shot and killed presented themselves as combatants when they armed themselves with AK-47s. The men who

~~SECRET~~

engaged Zahir did not purposely or knowingly shoot into a room full of people, especially women. Actions taken by the APU mentor upon immediate discovery of the bodies (video) and the ground force commander (sitrep reporting the bodies within 10-15 minutes of assessing the scene) are reasonable, in accordance with SOP, and not the actions of those trying to mislead or cover up.

While there were tactical mistakes made, these were not within the scope of this investigation and they were addressed in the initial investigation. Our investigation **does** provide secondary and tertiary recommendations related to tactical lessons learned, information operations, reporting, and record keeping.

~~SECRET~~

CHRONOLOGY OF INVESTIGATION

DATE	EVENT/ACTIVITY
8April10	Received appointment letter from (b)(3), (b)(6) USFOR-A/ISAF SJA
8April10	(b)(3), (b)(6) assigned to team; (b)(6) (b)(3), (b)(6) assigned as legal advisor.
9April10	Team assembled at BAF; established office at MCE-A; awaiting paralegal support; in-calls with (b)(1)1.4a JAG, (b)(3), (b)(6).
10April10	Studied previous investigation, prepared investigation plan, met with (b)(1)1.4a Commander, requested additional documentation.
11April10	Met with (b)(1)1.4a OPS officer, (b)(3), (b)(6) Discussed case, reviewed Powerpoint brief synopsising the event. Received requested products from (b)(6) (b)(3), (b)(6) Provided first list of names to interview and began coordination with units, both in Afghanistan and U.S. Began coordination with BSO for transportation and support to Gardez incident site. Continued to work through specified/ implied tasks, facts, assumptions in order to frame an approach to this investigation and questions to ask witnesses. Ultimate goal is to answer questions directed in appointment order. (b)(3), (b)(6) (b)(3), (b)(6) assigned as additional legal support.
12April10	Completed specific/implied tasks, facts, assumptions. Discussed questioning approach for witnesses. Prioritized witness list and schedule. Interviewed (b)(6) (b)(3), (b)(6) regarding (b)(1)1.4a JOC procedures and his recall of JOC events the evening of the operation. Continued contacting POCs to arrange for witness interviews. (b)(1)1.4a (b)(1)1.4a JAG office contacted previous 15-6 IO (b)(3), (b)(6) (b)(3), (b)(6) to arrange for interview and for his assistance in

	<p>arranging interviews of witnesses in Damneck, VA area. (b)(3), (b)(6) wrote MFR regarding interview with (b)(3), (b)(6) spoke with (b)(1)1.4a, (b)(3), (b)(6) re: mission clearance procedures.</p>
13April10	<p>Conducted telephonic interviews: (b)(3), (b)(6) at approx. 1730; (b)(3), (b)(6) at 2030; (b)(3), (b)(6) at 2200; (b)(3), (b)(6) at 2230; (b)(3), (b)(6) at 2245. (b)(3), (b)(6) to arrange for interviews with remaining AF members and to obtain ISR feed and Comms feed.</p>
14April10	<p>Began typing MFRs regarding previous day's witness interviews. (b)(3), (b)(6) coordinated site visits to Gardez and Compound Site with (b)(1)1.4a Arranged for interviews with (b)(3), (b)(6) (b)(3), (b)(6) Continued efforts to obtain ISR sound/footage, mIRC chat, SATCOM recordings. Arranged for interview with (b)(3), (b)(6) (b)(3), (b)(6)</p>
15April10	<p>(b)(1)1.4a, (b)(3), (b)(6) to discuss site visits. Interviewed (b)(3), (b)(6) (b)(3), (b)(6) Continued efforts to arrange interviews; attempted to contact (b)(3), (b)(6) on original investigation and (b)(3), (b)(6) (b)(3), (b)(6) to arrange interviews with the family members. Attempting to arrange for interview with ANP BG Destigeer.</p>
16April10	<p>Conducted in person interview with (b)(3), (b)(6) at 1230. Conducted telephonic interviews: (b)(6) (b)(3), (b)(6) at 2035; (b)(6) (b)(3), (b)(6) at 2045; (b)(3), (b)(6) at 2100. Continued to coordinate travel for 18 April.</p>
17April10	<p>Received sworn statements from (b)(3), (b)(6) (b)(3), (b)(6) via e-mail. (b)(6)</p>

	<p>(b)(3), (b)(6) also forwarded a JOC Log and a timeline put together by his team after the operation, included as an exhibit to the original 15-6. The JOC log sent matched the JOC Log included as an exhibit in the original 15-6. Conducted telephonic interviews with (b)(3), (b)(6) at 2330.</p>
18April10	<p>Travelled to (b)(1)1.4a to interview (b)(3), (b)(6) (b)(3), (b)(6), BG Destigeer, Haji (b)(6) (b)(6) Then travelled to Jalalabad Airfield to visit (b)(1)1.4a and meet with (b)(6) (b)(3), (b)(6) Travelled to (b)(1)1.4a to meet with five of the six APU members involved in the operation.</p>
19April10	<p>Reviewed ISR feed; didn't have audio or time stamp. Received JOC Logs for (b)(1)1.4a for the night of the operation. Conducted telephonic interviews with (b)(3), (b)(6) at 1730.</p>
20April10	<p>Conducted telephonic interview with (b)(3), (b)(6) Began to assemble facts and determine findings and recommendations.</p>
21April10	<p>Wrote facts, findings, and recommendations and began to assemble exhibits and associated documentation. Conducted telephonic interview with (b)(3), (b)(6)</p>
22April 10	<p>Completed assembling, editing investigation.</p>